RECENT DECISIONS

CONFLICT OF LAWS—USURY—PRESUMPTIONS.—A Washington corporation borrowed money from an Illinois firm, a deed of trust being given on the property of the corporation, as security, to a trustee in Illinois, for the purpose of improving its property and paying its indebtedness. A rate of interest was reserved, illegal by the laws of Illinois but valid in Washington. *Held,* the laws of Washington govern. *Crawford* v. *Seattle, R. & S. Ry. Co.* (Wash.), 150 Pac. 1155. See 2 VA. L. REV. 534.

CONSTITUTIONAL LAW — RELIGIOUS LIBERTY—BIBLE READING IN PUBLIC SCHOOLS.—A state constitution provided that every person has the natural right to worship God according to the dictates of his own conscience and that no preference shall ever be given to, or discrimination made against, any church, sect or creed of religion. Under a resolution passed by the board of school directors, all teachers in the public schools of that district were requested to open the daily sessions with readings from the Bible, without note or comment, and also with the Lord's Prayer. The King James' version of the Bible, including both the New and Old Testament, was the one actually used by the teachers. *Held,* this is an unlawful discrimination against Jews, but not against Roman Catholics. *Herold* v. *Board of School Directors* (La.), 68 South. 116.

The untrammelled right of each person to worship God according to the dictates of his own conscience is a fundamental part of the rights guaranteed by American freedom. See *State* v. *School Board,* 76 Wis. 177, 44 N. W. 967, and cases cited. But the Constitution of the United States makes no provision for protecting the citizens of the respective states in their religious liberties, save as to legislation by Congress; and the control of these matters is left to the legislatures of the several states, subject only to the restrictions imposed by the respective state constitutions. *Permoli* v. *First Municipality,* 44 U. S. 589.

The weight of authority seems to be opposed to the doctrine of the principal case. *Hackett* v. *School District,* 120 Ky. 608, 87 S. W. 792; *Pfeiffer* v. *Board of Education,* 118 Mich. 560, 77 N. W. 250, 42 L. R. A. 536. Thus, it would seem that, under the usual constitutional provisions, the reading of the Bible in the public schools, without note or comment by the teacher, is not a violation of the right to worship God, or not to do so, according to one's own conscience. *Church* v. *Bullock* (Tex. Civ. App.), 100 S. W. 1025, 16 L. R. A. (N. S.) 860, and note; *Moore* v. *Monroe,* 64 Ia. 367, 20 N. W. 475; *Hackett* v. *School District, supra.* This is not a form of sectarian instruction, since it is intended merely to acquaint the school children with those fundamental principles of morality and good conduct recognized by Christian peoples as necessary attributes of good citizenship. *Pfeiffer* v. *Board of Education, supra.* But, in some states, Bible reading in the public schools is regarded as religious discrimination. *People* v. *Board of Education,*

245 Ill. 334, 92 N. E. 251; *State* v. *School Board, supra.* A distinction has been made, however, between the reading of the Bible as a form of religious worship and as a mere class exercise. *State* v. *Scheve,* 65 Neb. 853, 93 N. W. 169.

The principal case takes the minority view; and the distinction made therein that the reading of the Bible is unconstitutional as to Jews, but not as to Roman Catholics, would appear unsound. The wrong, if any, arises not out of the particular version of the Bible, but in the compulsion to join in any form of worship. *State* v. *Scheve, supra.*

CORPORATE STOCK—LIFE TENANT—EXTRAORDINARY DIVIDENDS.—A testator bequeathed the revenue from certain corporate stocks to defendant during life. After the testator's death, the corporation declared an extraordinary cash dividend, payable in stock at the option of its stockholders, which the defendant claims as revenue. *Held,* the defendant's claim is proper. *Humphrey* v. *Lang* (N. C.), 86 S. E. 526. See 1 VA. L. REV. 138.

CRIMINAL LAW—HOMICIDE—COEXISTENCE OF EXPRESS MALICE AND IRRESISTIBLE PASSION.—A homicide took place under such circumstances as to cast doubt upon the condition of the defendant's mind at the time of the killing. At the trial, the jury was instructed that irresistible passion, if proved to have existed, was insufficient to reduce the degree of the offense, if the killing was done with express malice. *Held,* irresistible passion and express malice cannot coexist. *State* v. *Salgado* (Nev.), 150 Pac. 764.

Express malice, in connection with homicide, exists where an act is deliberately committed in the pursuance of a formed design to kill another. *State* v. *Roberts,* 2 Boyce (Del.), 140, 78 Atl. 305; *Martinez* v. *State,* 30 Tex. Cr. App. 129, 16 S. W. 767, 28 Am. St. Rep. 895. Further, the existence of deliberate malice being once ascertained, its continuance down to the time of the commission of the act will be presumed, unless evidence is introduced showing that the wicked purpose was abandoned. *State* v. *Johnson,* 23 N. C. 354, 35 Am. Dec. 742; *State* v. *Tilly,* 25 N. C. 424; *Riggs* v. *State,* 30 Miss. 635. Irresistible passion may be defined as that state of the mind in which men of average disposition act rashly or without due deliberation or reflection, and from passion rather than judgment. *Mahr* v. *People,* 10 Mich. 220; *State* v. *Johnson,* 129 Wis. 146, 108 N. W. 55, 5 L. R. A. (N. S.) 809. Uncontrollable and ungovernable temper is no excuse for a crime and does not reduce the killing to manslaughter, unless it arises from immediate and legally sufficient provocation. *Comm.* v. *Eckert,* 174 Pa. St. 137, 34 Atl. 305; *Henning* v. *State,* 106 Ind. 386, 6 N. E. 803, 55 Am. Rep. 756; *Reese* v. *State,* 90 Ala. 624, 8 So. 818. Homicide cannot be both malicious and in the heat of passion. Malice essential to murder in the first degree and passion essential to manslaughter cannot coexist at law, since the former implies a mind under the sway of reason while the latter results from a temporary loss of mental control. *Brown* v. *Comm.,* 86 Va. 466, 10 S. E. 745; *State* v. *Johnson,* 23 N. C. 354, 35 Am. Dec. 742; *State* v. *Sloan,* 22 Mont. 293.